STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK A. DOHNAL,

Defendant-Appellant.

UNPUBLISHED
October 25, 2002

No. 237492
Oakland Circuit Court
LC No. 2000-174723-FH

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a plea-based conviction of breaking and entering, MCL 750.110, for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to two to twenty years in prison. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On June 7, 2000, defendant broke into the shop of his former employer and stole a 1995 Ford F-250 pickup truck. Defendant was arrested while in possession of the truck the following day. On June 29, 2000, he pleaded guilty to receiving and concealing stolen property under $20,000, MCL 750.535(3)(a). After defendant pleaded guilty but before he was sentenced, he was charged in this case with breaking and entering the shop with intent to steal an automobile.

Defendant moved to dismiss, asserting that the second prosecution violated double jeopardy. The trial court disagreed, relying on *People v Squires*, 240 Mich App 454; 613 NW2d 361 (2000). Double jeopardy issues are reviewed de novo on appeal. *People v Mackle*, 241 Mich App 583, 592; 617 NW2d 339 (2000).

The constitutional prohibition against double jeopardy provides three separate protections: "(1) protection against prosecution for the same offense after an acquittal, (2) protection against a second prosecution for the same offense after conviction, and (3) protection against multiple punishments for the same offense." *People v Hunt (After Remand)*, 214 Mich App 313, 315; 542 NW2d 609 (1995). The trial court erred in relying on *Squires*. That case involved a multiple punishment claim and "the term 'same offense' has a different and broader meaning in a case involving a subsequent prosecution than it does … where multiple punishments were imposed during a single trial." *People v Wakeford*, 418 Mich 95, 104; 341 NW2d 68 (1983).

When, as here, successive prosecutions are at issue, Michigan applies the "same transaction" test, which requires the prosecutor "to join at one trial all charges that grow out of a 'continuous time sequence' and that demonstrate 'a single intent and goal.'" *People v McMiller*, 202 Mich App 82, 85; 507 NW2d 812 (1993). Because breaking and entering is a specific intent crime, *Hunt, supra* at 316, whereas receiving and concealing is a general intent crime, *People v Watts*, 133 Mich App 80, 83; 348 NW2d 39 (1984), "the criterion is whether the offenses are part of the same criminal episode, and whether the offenses involve laws intended to prevent the same or similar harm or evil, not a substantially different, or a very different kind of, harm or evil." *Crampton v 54-A District Judge*, 397 Mich 489, 502; 245 NW2d 28 (1976) (footnote omitted).

Given that defendant broke into a business with intent to commit a larceny, committed the larceny, and was found the next day in possession of the property stolen during the break-in, these offenses were clearly part of a single criminal episode. Although the two offenses did not occur on the same day, the passage of time is not a critical factor to determining whether two offenses were part of the same criminal episode. *People v Ainsworth*, 197 Mich App 321, 326; 495 NW2d 177 (1992). In addition, "the offenses are closely related and in the same class or category, … and, thus, … the laws involved may be said to be intended to prevent similar harms." *Hunt, supra* at 317. Accordingly, we find that defendant's conviction of breaking and entering violated double jeopardy.

Reversed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra